

**Amendment Number 2**  
**to**  
**Contract Number DIR-SDD-515**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Xerox Corporation**

This Amendment Number 2 to Contract Number DIR-SDD-515 ("Contract") is between the Department of Information Resources ("DIR") and Xerox Corporation ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2, Term of Contract**, is hereby restated in its entirety as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through May 13, 2009. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) optional one-year renewal periods.

2. **Contract, Section 8, Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts**, is hereby updated to include the following:

M. All references to Catalog Information System Vendors (CISV) are hereby deleted.

N. All references to Texas Building and Procurement Commission (TBPC) are hereby revised and replaced with Texas Comptroller of Public Accounts (CPA).

3. **Appendix A, Section 3, Definitions, A. Customer**, is hereby restated in its entirety as follows:

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;

- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.
- 10) Those Customers that are private, not for profit entities are not permitted to use Appendix C Master Lease Agreement.

4. **Appendix A, Section 9, Vendor Responsibilities, A. Indemnification**, is hereby restated in its entirety as follows:

### **A. Indemnification**

#### **1. Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND /OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS FEES AND EXPENSES, arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. EXCEPT AS PROVIDED BELOW, VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. Except for indemnified matters and to the extent permitted by applicable law, all other liability of Xerox to the Customer for damages of any kind or type, including but not limited to direct, indirect, consequential, incidental, or special damages, arising from Xerox' performance or failure to perform under this Contract or by virtue of Xerox' tortious conduct (including negligence whether passive or active) shall be limited to the amounts paid by Customer under this Agreement. Provided, however, that the foregoing limitation of liability shall not apply to claims by the Customer for damage to real or tangible property caused by Xerox' negligence.

Notwithstanding the above, Vendor shall not be liable (Vendor shall not be responsible for costs of defense or attorney fees) for claims, actions, suits, demands, proceedings, costs, damages or liabilities, arising out of, or resulting from the negligent or willful acts or omissions by the State of Texas or its Customers, officers, agents, employees, successors or assigns.

#### **2. Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights

in connection with the use of any product or service supplied under the Contract.. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. Vendor agrees to defend against any and all third party claims at Vendor's expense, whether or not such claims become the subject of litigation provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) grants Vendor control over the defense and settlement thereof, provided however in the instance of a state agency Customer, the litigation will be coordinated by the Office of the Attorney General for the State of Texas, and (iii) reasonably cooperates in response to Vendor's requests for assistance. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. EXCEPT AS PROVIDED BELOW, VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEY'S FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) Vendor shall have no liability (Vendor shall not be responsible for costs of defense or attorney fees) if the alleged infringement is caused in whole or part by: (i) use of the product or service in combination with product or services not provided under the Contract, (ii) use of the product or service for a purpose or in a manner for which the product or service was not designed, (iii) any modification made to the product without Vendor's written approval, (iv) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (v) any intellectual property right owned by or licensed to Customer, or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

### **3) Independent contractor**

**1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.**

5. **Appendix A, Section 9, Vendor Responsibilities**, is hereby updated to include the following:

#### **M. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION.

2) VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

3) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO A BREACH OF SUBSECTION M.(1) ABOVE. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

6. All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 2, Amendment Number 1, and then the Contract.

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of last signature.

**Xerox Corporation**

**The State of Texas, acting by and through  
the Department of Information Resources**

**By: /Signature on File/** \_\_\_\_\_

**By: /Signature on File/** \_\_\_\_\_

**Name: Tom Mandell**

**Name: Cindy Reed**

**Title: Major Account Contract Manager**

**Deputy Executive Director  
Title: Operations & Statewide Technology Sourcing**

**Date: 6/11/2008**

**Date: 6/13/2008**

**Legal: /Initial on File/**